IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.Rev.Pet.No. 606 of 2000()

CRA.267/1998 of ADDL. SESSIONS COURT, ALAPPUZHA
SC.21/1998 of ADDL.ASSISTANT SESSIONS COURT, ALAPPUZHA
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REVN. PETITIONERS: APPELLANTS- ACCUSED 1 AND 2
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1. UTHAMAN, S/O.DAMODARAN,
ANPATHIL CHIRA, PACHA MURI,
EDATHUA VILLAGE.

2. SASI, S/O.THANKACHAN, PULIPRA VEEDU,
EDATHUA PANCHAYAT, WARD NO.V,
PACHA MURI, EDATHUA VILLAGE.

BY ADV. SRI.RAJA VIJAYARAGHAVAN
SRI.M.T.SURESHKUMAR

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.MP. 3348/2000 IN CCRRP. 606/2000

DISMISSED

28.06.2007 **SD/- K.R.UDAYABHANU , JUDGE**

/TRUE COLPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

Crl. R.P. No.606 of 2000

Dated 28th June, 2007

ORDER

The revision petitioners/A1 & A2 stand convicted for the offence under section 376 read with section 34 IPC and sentenced to R.I for 7 years and to pay a fine of Rs.10,000/- each and in default to undergo simple imprisonment for one year each.

2. The prosecution case is that on 1-10-1996 at about 7.40 p.m when PW-1/de facto complainant just came out of the house to take bath in the nearby canal and reached the courtyard - at the time there was power cut- both the accused persons caught hold of her, closed her mouth and laid her in the courtyard and had forcible intercourse one after another one. It is the case that when one of the accused has ravished her, the other kept her mouth closed and hands immobile.

3. The evidence adduced in the matter consisted of the testimony of PWs 1 to 15; Exts.P1 to P12 and M.Os 1

and 2.

4. The solitary evidence in support of the prosecution version is that of PW-1, the prosecutrix. It is her evidence that she is living separated from her husband. She is in her thirties and has got 2 children. She was living with her elder sister's house helping her brother-in-law in his tea shop. It is the daily routine that at about 6.30 p.m she and the children will return from the tea shop. Her sister and the brother in law will reach the house by 10 p.m. She has narrated the incident as such. The incident was revealed to her elder sister on the 3rd day of the incident. M.Os 1 and 2 dresses worn by her at the time were found torn. PW-2 has deposed that PW-1 revealed to her the incident on the 3rd day at the tea shop when faced with her insistent questions as to why she was found in a depressed mood. PW-3 is the school going son of the elder sister of PW-1 who was then studying in the 6th standard. He has stated that in that particular evening, the accused came to their house and knocked on the door

and wanted a lamp on the pretext to take a bamboo shaft from the paddy field and that some time later they returned the lamp. Again after some time, they knocked on the door and asked for his father allegedly to pay the amounts due for taking food at the tea shop. After sometime PW-1 went to take bath, PW-3 has stated. PW-4 is the motor pump driver engaged by PW-6 to run the motor to pump out water from the paddy fields. He has stated that the right for fishing in the water logged paddy field is fetched by auction and one Kuttappai (PW.6) had bid the auction and the accused are the persons engaged by PW-6 to catch fish in the paddy field. He has stated that he saw the accused near the motor shed till about 7 p.m on the particular day when they left for dinner. He was treated as hostile as he denied the suggestion that the accused were found near the motor shed at about 7 p.m. PW-6 Kuttappai who had auctioned the right of fishing has stated that the accused were engaged by him for fishing and that after 1-10-96, they have not attended

the work. PW-7 has proved Ext.P3 scene mahazar. PW-8, the doctor who examined PW-1 and issued Ext.P4 wound certificate, has testified that there were no external injuries on the private parts or on the body of PW1. PW-9 and PW-10, the doctors, who had examined the accused and issued Exts.P6 and P7 potency certificates have proved the same.

The contention of the counsel is mainly based on the statement of PW-2 brought out in the chief examination that it was decided to lodge a complaint as everybody knew about the incident. It is the contention that the incident was with the consent of PW-1 and that others somehow knew about the incident and that was why such a statement is made by PW-1. I find that no such inference need be made in the circumstance as the version of PW-2 is that the matter was discussed at the tea shop and hence, the reaction of PW-1 as stated by PW-2. May be in rural settings , such reactions are probable.

It was also contended that there was no proper

evidence as to the identification of the accused. The above contention also cannot be entertained in view of the evidence of PW-3 that the accused had come to the house of PW-2 twice in the same evening and also that PW-1 is familiar with the accused who are allegedly working in the area for about one month prior to the incident.

The other contention is that PW-1 has admitted that 7 metres away from the scene of occurrence, there is a residential house and that if she had made noise, the inmates might have heard the same. I find that there can be no hard and fast rule as to the circumstances and situations when a particular incident takes place. There is no evidence that the inmates of the other house were available at the time. There is no evidence that PW-1 made any loud noise audible to that much of distance.

It was also contended that the absence of any injuries is a clear indication that the incident has taken place with the consent of PW-1. The courts below have considered the above aspect and has noted that PW-1 is a lady with two

children and aged more than 30 years and further the doctor examined her on the 4th day of the incident in the evening. It is not brought out that PW-1 forcibly resisted the attempt. There is no uniform pattern as to how victims react in such situations. Hence, the absence of injuries alone would not help the case set up by the defence. I find that the courts below have meticulously considered the evidence in detail and arrived at the conclusion that the offence alleged stands proved beyond reasonable doubt. I find that nothing has been brought out to interfere in the concurrent findings of the courts below. In the circumstances, the conviction is confirmed.

It is submitted that the incident has taken place more than 10 years back and that the accused were facing the criminal proceedings so far and that they are leading peaceful family life right now and that imprisonment will ruin their families. Considering the above circumstances, the sentence is modified to rigorous imprisonment for 6

months and to pay a fine of Rs.50,000/- each and in default to undergo simple imprisonment for 6 months each. The fine amount if realised shall be paid to PW-1. Set off is allowed.

The Crl.R P is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R. UDAYABHANU,J.

CRL.R.P.NO.606/2000

ORDER

28-6-2007.